

REQUEST FOR COUNCIL ACTION

SUBJECT: 13-7C-6 Remove Finding B

SUMMARY: Text Amendment – Amend the West Jordan Municipal Code Section 13-7C-6 “Amendments to the Land Use Map” removing Finding B from General Plan Amendment Findings in the Zoning Ordinance; City Wide applicability; City of West Jordan (applicant) [Ray McCandless #TA20150001]

FISCAL IMPACT: None.

STAFF RECOMMENDATION:

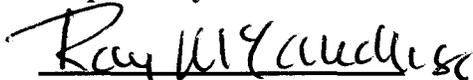
Staff recommends that the City Council accept the findings contained in the staff report and approve the proposed Text Amendment as recommended by the Planning Commission.

MOTION RECOMMENDED:

“Based on the analysis and findings set forth in this staff report, and upon the evidence and explanations received today, I move that the City Council approve Ordinance 15-08 including the proposed Text Amendments to Title 13, removing Finding B from General Plan Amendment Findings in the Zoning Ordinance, West Jordan Municipal Code Section 13-7C-6 as recommended by the Planning Commission.”

Roll Call vote required

Prepared by:


Ray McCandless, Senior Planner

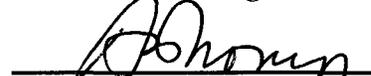
Reviewed by/Concur with:


Tom Burdett, Development Director

Recommended by:


Bryce Haderlie, Interim City Manager

Reviewed as to legal form:


Robert Thorup, Deputy City Attorney

I. BACKGROUND / ANALYSIS

City Code requires that amendments to the General Plan and Future Land Use Map be reviewed against the six findings listed in Section 13-7C-6. In general, these findings are meant to assure that the proposed amendment is consistent with the General Plan, will not adversely affect adjoining property and is in the overall best interests of the City. These findings are listed as follows:

“A. The proposed amendment conforms to and is consistent with the adopted goals, objectives and policies set forth in the city general plan;

B. The development pattern contained on the land use plan inadequately provides the appropriate optional sites for the use and/or change proposed in the amendment;

C. The proposed amendment will be compatible with other land uses, existing or planned, in the vicinity;

D. The proposed amendment constitutes an overall improvement to the adopted general land use map and is not solely for the good or benefit of a particular person or entity;

E. The proposed amendment will not adversely impact the neighborhood and community as a whole by significantly altering acceptable land use patterns and requiring larger and more expensive public infrastructure improvements, including, but not limited to, roads, water, wastewater and public safety facilities, than would otherwise be needed without the proposed change; and

F. The proposed amendment is consistent with other adopted plans, codes and ordinances.”

Amendments to the General Plan are more often changes to the Future Land Use map associated with a development proposal. Finding B applies specifically to changes to the Future Land Use Map and supports the view that the land use map should only be revised if there are inadequate optional sites available for a proposed use. This finding; however, does not factor in all scenarios or other circumstances that overall may improve or benefit the City and do not reflect current City policy of allowing more freedom to develop property. Repeatedly, Finding B has caused consternation among Planning Commissioners trying to adhere to the City Code. Staff is of the opinion that Finding B of Section 13-7C-6 should be eliminated from the City Code for the reasons stated in the findings section below.

On February 17, 2015, the Planning Commission voted 5-1 to forward a positive recommendation of the proposed Text Amendment to the City Council as recommended by Staff.

II. FINDINGS OF FACT

Section 13-7-D-7B, requires that prior to approving a Zoning Ordinance text amendment, the City Council shall make the following findings:

Criteria 1: *The proposed amendment conforms to the general plan and is consistent with the adopted goals, objectives and policies described therein;*

Discussion: There are no specific goals or policies related to eliminating findings for amendments to the General Plan. This criterion does not apply.

Finding: This criterion does not apply.

Criteria 2: *The proposed amendment is appropriate given the context of the request and there is sufficient justification for a modification to this title;*

Discussion: City Code, Section 13-7C-6, Finding B states “The development pattern contained on the land use plan inadequately provides the appropriate optional sites for the use and/or change proposed in the amendment;” This finding implies that the City’s policy toward amending the General Plan and Future Land Use Map is that neither should be amended if there are adequate optional sites within the City that can accommodate a proposed development. On the surface, this appears to be a beneficial policy because it discourages frequent or needless amendments to the adopted General Plan, but it does not reflect the current policy of the City to allow a developer or property owner the ability to pitch a particular property for a particular development, to be judged on the other criteria of plan change and rezone. Indeed, there may be situations where the amendment may be in the best interest of the City even though there are ample other optional locations already zoned or planned for the proposed use.

As an example, there are areas in the City that are designated Commercial or Professional Office on the Future Land Use Map that may be better suited for senior housing. There are many optional locations for senior housing throughout the City, but it may make sense to amend the Future Land Use map to support the use at a particular location. For this reason, Staff finds there is sufficient justification for the amendment and is recommending that Finding B be eliminated from the text. The remaining findings ensure compliance with the general plan, compatibility with adjoining land uses, assures that the amendment does not benefit only one person or entity and that the amendment does not significantly change the acceptable land use patterns or infrastructure.

Finding: The proposed amendment is appropriate given the context of the request and there is sufficient justification for a modification to the appropriate Sections of the Municipal Code.

Criteria 3: *The proposed amendment will not create a conflict with any other section or part of this title or the general plan; and*

Discussion: The proposed amendment will have a city-wide impact, with no particular area singled-out. The proposed amendment will not create a conflict with any other sections of the Municipal Code.

Finding: The proposed amendment will not create a conflict with any other section or part of the Municipal Code or the General Plan.

Criteria 4: *The proposed amendment does not relieve a particular hardship, nor does it confer any special privileges to a single property owner or cause, and it is only necessary to make a modification to this title in light of corrections or changes in public policy.*

Discussion: The proposed amendment will have city-wide implication and does not relieve any particular hardship or confer any special privileges to a single property owner or cause. The proposed amendment is deemed desirable given the scope and scale of new developments in the City.

Finding: The proposed amendment does not relieve a particular hardship, nor does it confer any special privileges to a single property owner or cause, and it is only necessary to make a modification to this title(s) in light of corrections or changes in public policy.

Conclusion:

The proposed text amendment is warranted and not contrary to any current goals and policies in the General Plan or conflicting with Title 13 (Zoning Ordinance) of the Municipal Code.

III. STAFF RECOMMENDATION

Staff recommends that the City Council accept the findings contained in this staff report and approve the proposed text amendment as recommended by the Planning Commission.

IV. MOTION RECOMMENDED:

Based on the findings set forth in this staff report, and upon the evidence and explanations received today, I move that the City Council **approve** the proposed text amendments to Title 13 as addressed in this report.

If the moving Councilmember disagrees with the staff's findings and conclusions and finds substantial evidence supporting a different result, the following motion may be given:

Based on the findings set forth in this staff report, and upon the evidence and explanations received today, I move that the City Council deny the proposed Text Amendments to Title 13. Specifically, I disagree with the Staff and find that the following required criteria for a text amendment approval has not been met:

1. The proposed amendment conforms to the General Plan and is consistent with the adopted goals, objectives and policies described therein;
2. The proposed amendment is appropriate given the context of the request and there is sufficient justification for a modification to this title;
3. The proposed amendment will not create a conflict with any other section or part of this title or the general plan; and
4. The proposed amendment does not relieve a particular hardship, nor does it confer any special privileges to a single property owner or cause, and it is only necessary to make a modification to this title in light of corrections or changes in public policy.

Which criteria has been met or not met? Why?

Note: All applicable criteria must be met to support a positive action by the City Council.

V. ATTACHMENTS:

Exhibit A – Planning Commission Minutes
Exhibit B – Legislative Draft and Ordinance

Exhibit A
Planning Commission Minutes
Attached

Exhibit A Planning Commission Meeting Minutes

MINUTES OF THE REGULAR MEETING OF THE WEST JORDAN PLANNING AND ZONING COMMISSION HELD FEBRUARY 17, 2015 IN THE WEST JORDAN COUNCIL CHAMBERS

PRESENT: Dan Lawes, Sophie Rice, David Pack, Zach Jacob, Bill Heiner, and Joshua Suchoski. Matt Quinney was excused.

STAFF: Greg Mikolash, Ray McCandless, Larry Gardner, Nannette Larsen, Nathan Nelson, Paul Brockbank, Tom Burdett, Robert Thorup, and Carol Herman.

OTHERS: Emily Backus, Susan Gould, Melissa Miller, Tessie Ostler, Warren Kirk, Reginald Dyson, Ulbby Dyson

The briefing meeting was called to order by Dan Lawes. The agenda was reviewed. Larry Gardner explained that the preliminary park plan for Item #3 shows the location and the plan will be finalized later. Item #4 was discussed regarding parking, traffic, and pedestrian safety.

The regular meeting was called to order at 6:01 p.m.

**1. Consent Calendar
Approve Minutes from February 3, 2015**

MOTION: David Pack moved to approve the Consent Calendar, the minutes from February 3, 2015 making a change on page 3 replacing ‘the next year’ to ‘2015’. The motion was seconded by Zach Jacob and passed 6-0 in favor. Matt Quinney was absent.

2. Text Amendment – Amend the West Jordan Municipal Code Section 13-7C-6 “Amendments to the Land Use Map” removing Finding B from General Plan Amendment Findings in the Zoning Ordinance; City Wide applicability; City of West Jordan (applicant) [#TA20150001]

Ray McCandless explained that the findings listed in the municipal code for future land use amendments include Finding B that discusses appropriate optional sites for the use. Staff felt that this finding supports the view that the land use map should only be revised if there aren’t enough optional sites for the proposed use of the property. That is important, but staff also felt that it doesn’t take into account all factors and scenarios. In order to make a positive recommendation to the city council for a land use map amendment all findings must be met. The other criteria is written to make sure that a change in the future land use map is consistent with other uses, doesn’t cause harm to any adjoining properties, has appropriate infrastructure, etc. Therefore, staff felt that they could remove finding B and still be covered.

Staff recommended that the Planning Commission accept the findings contained in the staff report and forward a positive recommendation to the City Council for the proposed text amendment to Section 13-7C-6.

At the request of Commissioner Jacob, Ray McCandless briefed those in attendance as to the purpose and history of the general plan and future land use map. The plan is a guide and every land use

decision that the city council and planning commission make are reviewed against it to make sure it meets the goals and policies. The future land use map is an educated guess as to what the best future land use for a particular property is. That will vary across the city, but they will look at impacts to adjoining properties and at the use itself. It is reviewed by the General Plan Committee, the Planning Commission, and is adopted by the City Council.

Tom Burdett said some land uses reflect the current makeup of the property, but in some areas there is vacant land or infill opportunities based on percentages of land use that is the best mix for matching jobs and population and retail to those specific land use designations. As a guide, the city council doesn't have to follow it in all circumstances, but they use it as an evaluation to all of the land use decisions they make.

Zach Jacob referred to the staff report on page 2 that says this finding may not reflect current city policy of allowing more freedom to develop property. He asked if that current city policy is written as part of the general plan.

Robert Thorup said it is an observation of what the city council has been willing to do. He said it comes down to two philosophies. A city council can adhere very tightly to the land use map where this finding makes sense. However, our city councils and planning commissions have historically said to developers that they will give more latitude. If a developer can acquire property and make a reasonable case as to why the particular use can take place there even though the city 'guessed' that it would have another use, then there has been freedom given to the developer to make that case through those criteria. The policy isn't written down, but it is from years and years of operational observation that they are providing some latitude to developers.

Dan Lawes opened the public hearing.

Further public comment was closed at this point for this item.

Zach Jacob was bothered by the characterization that the city put the land use map into place, whereas the general plan committee had more than a significant role. Since that is a citizen's committee, the residents of the city are determining the land use and the wishes of the residents of the city should be paramount over the wishes of a developer or the whims of making a change. He didn't think the finding needed to be stricken, but perhaps modified.

Joshua Suchoski thought that latitude for developers can be a good thing. Developers who have experience can see the potential of future uses and what will work in a certain location. A developer will want to have a viable investment for their property, so they won't be reckless. He thought the finding should be removed.

Dan Lawes agreed. The general plan is a static document, but a number of things change over time. For example a few years ago the agricultural use along 5600 West made sense, but if the plan hadn't changed then 5600 West wouldn't have recently been extended. The general plan is a guiding document for what we once saw for the property, but it has to change as the community's dynamic changes.

Bill Heiner asked if removing Finding B would provide more latitude.

Dan Lawes said it doesn't lock us in, but allows us to consider other proposals.

Zach Jacob said that Finding B hasn't hindered the city in the past; when it is pertinent then it is valuable to have it. There are circumstances when it does need to be applied.

Sophie Rice thought that the other findings cover the intent.

Joshua Suchoski felt that Finding B in this instance is the job of the Planning Commission. They make sure that all of the other findings are being met, and Finding B is somewhat redundant.

David Pack agreed with staff that at the surface this appears to be a beneficial policy because it discourages frequent or meaningless amendments to the adopted general plan. He agreed that it is a static document, but there may be situations where the amendment is in the best interest of the city even though there are optional locations for the proposed use. He agreed that the remaining findings will ensure compliance with the general plan to a certain extent. He asked if they could consider modifying Finding B with the term 'most beneficial site' as opposed to 'appropriate optional sites' for example. The commissioners were asked to uphold and follow the general plan, so he wants to make sure they are safeguarding it.

Sophie Rice said specifically Finding D covers the concern, because it has to be an overall improvement. No matter how good the general plan is, there are times when it can be improved.

Dan Lawes pointed out Finding F where it has to be consistent with other adopted plans.

Bill Heiner said they have still been able to find a way to move forward with Finding B in place.

Dan Lawes said it could be argued that we were overlooking the intent of Finding B.

Sophie Rice said she did overlook Finding B at times, because she felt that if she didn't then nothing would get accomplished. She felt that it comes down to central planning versus property rights. Looking at Finding B you can say there is a better place for that, but that isn't always an option for the developer because they don't own the alternate site.

Zach Jacob said to him it is the voice of the people versus property rights.

Joshua Suchoski said the plan changes and modifies as the city grows. When this plan was made a lot of current West Jordan residents didn't live here at that time. It has to be fluid in the sense that as time goes on and as the areas develop out perhaps what the city's general plan was at that time is not what the citizens and residents of the city want in that area now. His opinion was that all of the other findings in the code make it so they as a commission have to look into all of the issues already, so Finding B is redundant and doesn't allow them the latitude.

MOTION: Dan Lawes moved based upon the findings set forth in the staff report, and upon the evidence and explanations received today, to forward a positive recommendation to the City Council for the proposed text amendment to Title 13 as addressed in the report. The motion was seconded by Sophie Rice.

Bill Heiner asked if there are any unintended consequences in removing the finding. When it was put in the code no one knew what the consequences would be.

David Pack asked if we could project what the worst case scenario would be if it is removed.

Bill Heiner said he couldn't think of any, so it led him to be in favor of the amendment.

Dan Lawes said he couldn't see any either since they had failed to use it as it was intended up to this point.

VOTE: The motion passed 5-1 in favor with Zach Jacob casting the negative vote. Matt Quinney was absent.

3. Siena Vista Phase 4; 7000 South 5715 West; Preliminary Subdivision Plat (21 lots on 7.2 acres); R-1-6C&D(ZC) Zone; Peterson Development Co./Victor Barnes (applicant) [#SDMA20140016; parcel 20-26-200-016]

Warren Kirk, representing Peterson Development, 225 South 200 East, said they agree with everything in the staff report, but wanted to clarify the fencing along the power corridor as listed on page 6. He felt that when a corridor is blocked in it creates problems for policing by the residents. That area is planned as future open space so they are recommending a vinyl ranch style fence. They agreed with the idea of a consistent theme along 7000 South with the masonry pillars and vinyl in between.

Regarding overall percentage of open space for the project, Larry Gardner estimated that it is between 4 and 5 percent, including the detention area.

Joshua Suchoski was concerned with the ranch style fence being so close to 7000 South with regards to safety for children.

Warren Kirk said he just wanted clarification, but he thought that the residents might want access to the future open space.

Larry Gardner clarified that the property is a utility corridor owned by Rocky Mountain Power, and he didn't know of any plans by the city to install a trail.

Warren Kirk said that some people may want to install a gate to access the property. He said that they have been working closely with some of the residents regarding the park and he would be interested in their feedback on the fencing.

Larry Gardner said the ordinance allows the planning commission to require a fence for safety reasons, and staff felt that a solid vinyl fence is appropriate along the corridor. If the property owner modifies their fence in the future to install gates we can't stop that, but the city should not build the gates and should require the fence between the residential use and the utility corridor use. Mr. Gardner gave the history of the zoning of the property and requirement for open space, which was modified from 10%

Exhibit B
Ordinance and Legislative Draft

Ordinance and Legislative Draft

Exhibit B

Legal Review-Date/Initial: 2/20/15 | AVT
Text/Format -Date/Initial: 2/20/15 | BAC
Dept. Review-Date/Initial: 2/23/15 | TB
Adopted: - -2015 Effective: -

THE CITY OF WEST JORDAN, UTAH
A Municipal Corporation

ORDINANCE NO. 15- 08
[AMENDING LAND USE MAP]

AN ORDINANCE AMENDING TITLE 13, "ZONING REGULATIONS."

WHEREAS, the City of West Jordan adopted a City Code in 2009, for the purpose of carrying into effect and discharging all powers and duties conferred by law upon the city and its officers, employees and inhabitants, and to provide for the safety, preserve the health, promote the prosperity, improve the morals, peace, good order, comfort and convenience of the city and its inhabitants, and to protect property in the city; and

WHEREAS, the West Jordan City Council finds and determines that the purpose of the 2009 City Code, and the public health and welfare, will best be reached by the adoption of the following amendments to Title 13, Chapter 7 of the 2009 City Code.

NOW THEREFORE, IT IS ORDAINED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WEST JORDAN, UTAH:

Section 1. Title 13, Chapter 7, Article C, Section 6 of the 2009 City Code shall hereafter read as follows:

13-7C-6: FINDINGS FOR APPROVAL:

Any amendments to the general plan, including maps, shall be approved only if:

- A. The proposed amendment conforms to and is consistent with the adopted goals, objectives and policies set forth in the city general plan;
- B. Reserved.
- C. The proposed amendment will be compatible with other land uses, existing or planned, in the vicinity;
- D. The proposed amendment constitutes an overall improvement to the adopted general land use map and is not solely for the good or benefit of a particular person or entity;
- E. The proposed amendment will not adversely impact the neighborhood and community as a whole by significantly altering acceptable land use patterns and requiring larger and more expensive public infrastructure improvements, including, but not limited to, roads, water, wastewater and public safety facilities, than would otherwise be needed without the proposed change; and

F. The proposed amendment is consistent with other adopted plans, codes and ordinances. (2009 Code; amd. Ord. 11-35, 11-22-2011; Ord. 13-33, 11-13-2013; Ord. 15-___, 03-11-2015)

Section 2. Additions or amendments to the 2009 City Code when passed in such form as to indicate the intention of the city council to make the same a part of the 2009 City Code shall be deemed to be incorporated in the 2009 City Code, so that reference to the 2009 City Code hereafter includes the additions and amendments.

Section 3. This Ordinance shall become immediately effective.

Passed and adopted by the City Council of the City of West Jordan, Utah this 11th day of March, 2015.

CITY OF WEST JORDAN

By: _____
KIM V. ROLFE
Mayor

ATTEST:

MELANIE S. BRIGGS, MMC
City Clerk

Voting by the City Council	"AYE"	"NAY"
Jeff Haaga	_____	_____
Judy Hansen	_____	_____
Chris McConnehey	_____	_____
Chad Nichols	_____	_____
Ben Southworth	_____	_____
Justin D. Stoker	_____	_____
Mayor Kim V. Rolfe	_____	_____

CITY CLERK/RECORDER'S CERTIFICATE OF PUBLICATION

I, Melanie S. Briggs, certify that I am the City Clerk/Recorder of the City of West Jordan, Utah, and that the foregoing ordinance was published in the Legal Section, of the Salt Lake Tribune, on the _____ day of _____, 2015, pursuant to Utah Code Annotated, 10-3-711.

MELANIE S. BRIGGS, MMC
City Clerk/Recorder

[SEAL]

Legislative

13-7C-6: FINDINGS FOR APPROVAL:

Any amendments to the general plan, including maps, shall be approved only if:

- A. The proposed amendment conforms to and is consistent with the adopted goals, objectives and policies set forth in the city general plan;
- B. ~~The development pattern contained on the land use plan inadequately provides the appropriate optional sites for the use and/or change proposed in the amendment;~~ Reserved.
- C. The proposed amendment will be compatible with other land uses, existing or planned, in the vicinity;
- D. The proposed amendment constitutes an overall improvement to the adopted general land use map and is not solely for the good or benefit of a particular person or entity;
- E. The proposed amendment will not adversely impact the neighborhood and community as a whole by significantly altering acceptable land use patterns and requiring larger and more expensive public infrastructure improvements, including, but not limited to, roads, water, wastewater and public safety facilities, than would otherwise be needed without the proposed change; and
- F. The proposed amendment is consistent with other adopted plans, codes and ordinances. (2009 Code; amd. Ord. 11-35, 11-22-2011; Ord. 13-33, 11-13-2013; Ord. 15-___, 03-11-2015)